

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	File Number EB-00-TP-648
)	
William Davon Upson)	NAL/Acct. No.200432700001
8331 Lake Park Estates Blvd.)	FRN 0009617572
Orlando, Florida)	
)	

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: October 9, 2003

By the Enforcement Bureau, Tampa Office:

I. INTRODUCTION

1. In this Notice of Apparent Liability for Forfeiture (“NAL”), we find William Davon Upson (“Mr. Upson”) apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful violation of Section 301 of the Communications Act of 1934, as amended (“Act”).¹ Specifically, we find Mr. Upson apparently liable for operating a radio station on the frequency of 91.7 MHz without Commission authorization.

II. BACKGROUND

2. On July 23, 2003, two agents from the Commission’s Tampa Field Office operating an FCC direction finding vehicle in the Orlando, Florida area monitored an FM radio station operating on 91.7 MHz. Using direction finding equipment and techniques, the agents determined the source of the signal to be located at 1025 S. Orange Blossom Trail, Orlando, Florida. Based on field strength measurements taken by the agents of the station’s signal, the station required a Commission authorization to operate.² FCC license records showed no license issued for an FM broadcast station at that location or for the frequency 91.7 MHz in the Orlando, Florida area.

3. Still on July 23, 2003, the Tampa Field Office agents inspected the radio station broadcasting on 91.7 MHz at 1025 S. Orange Blossom Trail. Outside the door of this address, the agents could hear music that coincided exactly with that being broadcast on 91.7 MHz. The person answering the door identified himself with a driver’s license as William Davon Upson. The agents recognized Mr. Upson’s voice as the same voice broadcasting on 91.7 MHz immediately prior to the inspection. Mr. Upson was the only person seen by the agents inside the address during the inspection.

¹ 47 U.S.C. § 301.

² See 47 C.F.R. § 15.239(b).

III. DISCUSSION

4. Section 301 of the Act requires that no person shall use or operate any apparatus for the transmission of energy of communications or signals by radio within the United States except under and in accordance with the Act and with a license. On July 23, 2003, Mr. Upson operated radio transmitting equipment on the frequency 91.7 MHz without the required Commission authorization.

5. Based on the evidence before us, we find Mr. Upson willfully³ violated Section 301 of the Act by operating a radio transmission apparatus without a license.

6. Pursuant to Section 1.80(b)(4) of the Rules,⁴ the base forfeiture amount for operation without an instrument of authorization for the service is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Communications Act of 1934, as amended (“Act”), which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁵ Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED THAT, pursuant to Section 503(b) of the Act,⁶ and Sections 0.111, 0.311 and 1.80 of the Rules,⁷ William Davon Upson is hereby NOTIFIED of this APPARENT LIABILITY FOR A FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful violation of Section 301 of the Act by operating radio transmitting equipment on the frequency 91.7 MHz without benefit of the required Commission authorization.

8. IT IS FURTHER ORDERED THAT, pursuant to Section 1.80 of the Rules, within thirty days of the release date of this NAL, William Davon Upson SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture.

9. Payment of the forfeiture may be made by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note the NAL/Acct. No. and FRN referenced above. Requests for payment of the full amount of this NAL under an installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th

³ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that “[t]he term ‘willful’, when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act” See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁴ 47 C.F.R. § 1.80(b)(4).

⁵ 47 U.S.C. § 503(b)(2)(D).

⁶ 47 U.S.C. § 503(b).

⁷ 47 C.F.R. §§ 0.111, 0.311, 1.80.

Street, S.W., Washington, D.C. 20554.⁸

10. The response, if any, must be mailed to Federal Communications Commission, Office of the Secretary, 445 12th Street SW, Washington DC 20554, Attn: Enforcement Bureau, Spectrum Enforcement Division and MUST INCLUDE THE NAL/Acct. No. referenced above.

11. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices ("GAAP"); or (3) some other reliable and objective documentation that accurately reflects the petitioner's current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

12. Under the Small Business Paperwork Relief Act of 2002, Pub L. No. 107-198, 116 Stat. 729 (June 28, 2002), the FCC is engaged in a two-year tracking process regarding the size of entities involved in forfeitures. If you qualify as a small entity and if you wish to be treated as a small entity for tracking purposes, please so certify to us within thirty (30) days of this NAL, either in your response to the NAL or in a separate filing to be sent to the Spectrum Enforcement Division. Your certification should indicate whether you, including your parent entity and its subsidiaries, meet one of the definitions set forth in the list provided by the FCC's Office of Communications Business Opportunities (OCBO) set forth in Attachment A of this Notice of Apparent Liability. This information will be used for tracking purposes only. Your response or failure to respond to this question will have no effect on your rights and responsibilities pursuant to Section 503(b) of the Communications Act. If you have questions regarding any of the information contained in Attachment A, please contact OCBO at (202) 418-0990.

13. IT IS FURTHER ORDERED THAT a copy of this NAL shall be sent by regular mail and Certified Mail Return Receipt Requested to William Davon Upson, 8331 Lake Park Estates Blvd., Orlando, FL 32818-4804.

FEDERAL COMMUNICATIONS COMMISSION

Ralph M. Barlow
Tampa Field Office, Enforcement Bureau

Attachment

⁸ See 47 C.F.R. § 1.1914.